IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5039 OF 2007

Badriprasad Bhorika Family Trust ...Petitioners

v/s

Bank of Maharashtra and ors. ...Respondents

Mr Pandya i/b M/s T.N. Tripathi and Co. for Petitioners.

None for Respondents.

CORAM : D.K. DESHMUKH AND V.M. KANADE JJ.

DATE : 11TH DECEMBER 2007.

P.C. :-

1. By this petition, the petitioners challenge the order passed by the Appellate Debt Recovery Tribunal, Mumbai. By that order, the Tribunal has condoned the delay of 136 days in filing appeal before the D.R.T. The Appellate Tribunal found that though the reasons given by the Bank cannot be said to be totally satisfying, still considering that what is involved is public money it has condoned the delay, but directed the Bank to pay cost of Rs.20,000/- to the petitioner. The learned counsel appearing for petitioners relying on a judgment of the Supreme Court in the case of Union of India v/s Tata Yodogawa Ltd., reported in 1988(38) ELT 739 (SC), submits that the delay ought not to have been condoned. He also submits that the reasons given in the affidavit for delay and the reasons given in the appeal memo are totally different. In our opinion, the petition cannot be entertained in the extraordinary jurisdiction of this Court. The effect of the order impugned in the petition is that delay in filing appeal is condoned with the result now the parties will be heard on merits. The condonation of delay is always in the discretion of the Court, the Court has exercised its discretion and condoned the delay. One of the

considerations which weigh with the Court in condoning delay is involvement of public funds. In our opinion, as the order does justice between the parties, it will not be appropriate to entertain the petition. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(V.M. KANADE J.)